

**MINUTES**  
**COMMITTEE ON ETHICS**  
**TENTH FLOOR CONFERENCE ROOM**  
**WEDNESDAY, MAY 24, 1995 -- 10:00 A.M.**

**Meeting was called to order at approximately 10:05 a.m.**

**MEMBERS PRESENT:**

Councilmember Paul F. Novak, Chair  
Councilmember Rick Lilly, Vice-Chair  
Councilmember Howard Jones, Member

**OTHERS PRESENT:**

Russell Smith, Citizen  
Joyce Meissner, Board of Ethics Member  
Marilynn Slade, City Clerk  
Liza Estlund Olson, Mayor's Office  
John Mertz, Board of Ethics Member  
Harold Leeman, Citizen  
Jim Smiertka, City Attorney  
Ron Onufer, Council Staff  
Tina Gallante, Council Staff

**APPROVAL OF MINUTES**

COUNCILMEMBER JONES MOVED TO APPROVE THE MINUTES OF THE FEBRUARY 14, 1995, MEETING AS SUBMITTED. MOTION CARRIED, 3-0.

**ACTION/DISCUSSION**

**Ethics Ordinance**

Councilmember Novak began by indicating that there is specific proposed ordinance at this time to be considered, he simply wants to review the time table by which the ordinance and handbook needs to be in place.

Ms. Slade commented the language in the charter states the ordinance needs to be in place one year from the date of adoption. Mr. Smiertka added it would be one year from last December 8.

The Committee then calculated a time table of certain deadlines that will have to be met in order to met the December 8 deadline. Mr. Smiertka stated that the existing ordinance will be used and different language will be incorporated into it. He specifically noted that the issue of probable cause will be added. Councilmember Jones added that when the draft ordinance is completed and before the Ethics Board, he would hope the review of it would be open and public interest sought.

Ms. Meissner stated that she hopes the Ethics Board will be able to speak with the various department heads, as each department has specific needs that should be addressed and made part of the handbook.

The Committee also indicated the form for financial disclosure needs to be reviewed at the same time.

COUNCILMEMBER LILLY MOVED TO APPROVE A COMMITTEE REPORT OUTLINING THE TARGET DATES AS FOLLOWS:

- \* JULY 1995 -- DRAFT ORDINANCE FROM CITY ATTORNEY TO BE SUBMITTED TO THE ETHICS BOARD
- \* SEPTEMBER 1995 -- ETHICS BOARD TO REFER THEIR RECOMMENDATIONS ON THE ORDINANCE TO THE CITY COUNCIL
- \* OCTOBER 1995 -- CITY COUNCIL TO INTRODUCE ORDINANCE AND SET THE PUBLIC HEARING
- \* NOVEMBER 1995 -- ENACTMENT OF THE ORDINANCE
- \* DECEMBER 1995 -- PUBLICATION OF THE HANDBOOK, FINANCIAL STATEMENT FORMS, EFFECTIVE DATE OF THE ORDINANCE ON RECORD

MOTION CARRIED, 3-0.

## **Status of Ethics board -- Early Retirement as Requested by Ken Vaughn**

Councilmember Novak commented that he wanted to open the discussion up for the purposes of finding out when the Ethics Board thinks they will complete their investigation of the Early Retirement issue. It would be his wish to have a resolution requesting they complete it by the end of June 30, 1995.

Ms. Meissner stated the Board has had discussion on moving this whole matter along and having additional meetings to get through it quicker. Her personal opinion is that the Board does need to push it along. The investigation of Jan Lazar is almost complete and she believes they only have one more investigation to go.

Mr. Smiertka stated that his concern is that the City has federal litigation with the McKane suit that has had to be adjourned for six months because he is unable to get depositions of certain individuals because the Ethics Board has not completed their investigation and the individuals claim the Fifth Amendment right. He has made a verbal request of the Board to complete their investigation as soon as possible so that his office can complete their work. He emphasized the Board's review does not have to be exhaustive in nature, as their function is to review the basic facts.

Ms. Meissner commented that some of the delay has been because of the new members and the transitions that have had to be made. She urged Mr. Smiertka to put his request in writing so that it can be taken care of.

COUNCILMEMBER JONES MOVED TO APPROVE A RESOLUTION REQUEST THAT THE ETHICS BOARD COMPLETE THEIR INVESTIGATION OF THE EARLY RETIREMENT MATTER BY JUNE 30, 1995, EMPHASIZING THE FACT THAT THE FEDERAL LITIGATION ON THE MCKANE CASE HAS BEEN ADJOURNED UNTIL SUCH A TIME THAT THE ETHICS BOARD MAKES THEIR CONCLUSION. MOTION CARRIED, 3-0.

Mr. Mertz in at 10:40 a.m.

After review the matter with Mr. Mertz, he did state that he too was acting on the same deadline of June 30, 1995, and he assured the Committee it will be complete by that time.

Mr. Leeman questioned when the Mayor will appoint the four additional members to the Ethics Board. Ms. Olson responded by July 1, 1995.

## **Process for Motions to Recuse**

Councilmember Novak indicated that he believes it is important to have a City Attorney opinion, keeping in mind the State law, regarding when it is appropriate for a Councilmember to recuse themselves and when it is not. He also commented that the incompatibility issue should be outlined relating to federal and state employees.

Councilmember Lilly reviewed his position as it relates to his employment with MDOT and a problem that arose when he served on the Ingham County Board of Commissioners. His boss at MDOT has taken the position that he should not vote on any matters that deal directly with MDOT. He indicated that often times when he is excused from voting on an issue the project has nothing to do with his position.

Mr. Mertz added that if Councilmember Lilly is not directly working on the specific project then he should be allowed to vote.

Mr. Smiertka reviewed that the whole matter will have to be addressed. If there is a Councilmember with a clear conflict of interest under the State statute and there is a situation of clear violation, then he would definitely say something to that individual and have them disclose the situation. When you get into a conflict because it violates the Charter or Ethics Rules, he also would have an obligation to disclose. On monetary reasons, the Charter dictates. He did state that the Council Rules are inaccurate regarding this matter and the rule will have to be changed.

COUNCILMEMBER LILLY MOVED TO APPROVE A COMMITTEE REPORT REQUESTING THE CITY ATTORNEY PREPARE AN OPINION, WORKING CLOSELY WITH THE ETHICS BOARD, RELATIVE FOR MOTIONS TO RECUSE; SPECIFICALLY TO INCLUDE, DIRECT CONFLICTS OF INTEREST, THE DEFINITION OF INCOMPATIBILITY OF OFFICES PER THE STATE LAW, AND A BETTER DESCRIPTION OF APPEARANCE OF IMPROPRIETY AND A BETTER DEFINITION OF WHEN COUNCILMEMBER SHOULD VOTE UNDER THESE ISSUES AND WHEN THEY SHOULD NOT. THE COMMITTEE REPORT ALSO TO INCLUDE THE REFERRAL OF THE INACCURATE COUNCIL RULE TO THE GENERAL SERVICES COMMITTEE FOR CHANGE, AND THAT THE ETHICS BOARD PREPARE A FORM FOR IMPROPRIETY, EMPHASIZING THAT IT BE KEPT BRIEF. MOTION CARRIED, 3-0.

Mr. Smiertka added that his office has City Attorney opinions dated back to the 1960's covering a lot of these types of issues. He did have in this year's budget \$10,000 to get those opinions bound in hard cover books, but took it back out; however, he wanted to make it known these opinions can be utilized.

**ADJOURN:**

Meeting was adjourned at 11:10 a.m.

**Respectfully submitted,**

**Tina M. Gallante  
Administrative Secretary**

**Approved by the Committee.**

**Signed by:**

A handwritten signature in cursive script, appearing to read "Paul F. Novak", is written over a horizontal dashed line.

**COUNCILMEMBER PAUL F. NOVAK  
CHAIR**

Appropriate documents attached.